

46 Am. Jur. 2d Judges § 183

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Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

3. Motion for Disqualification and Affidavit

b. Affidavit of Prejudice

§ 183. Form and sufficiency of affidavit of prejudice filed with motion to recuse judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

Forms

Forms relating to affidavits for disqualifying judges, generally, see Am. Jur. Pleading and Practice Forms, Judges; Am. Jur. Pleading and Practice Forms, Motions, Rules, and Orders; Am. Jur. Pleading and Practice Forms, Criminal Procedure [\[Westlaw®\(r\) Search Query\]](#)

To warrant disqualification of the judge, the affidavit supporting the motion must state facts from which it may reasonably be inferred that the judge has a bias or prejudice that will in all probability prevent the judge from dealing fairly with the moving party.¹ The affidavit need not contain every fact that establishes the judge's prejudice; rather, it is sufficient if the affidavit verifies the facts set out in the motion.² However, it is necessary that an affidavit supporting a motion to disqualify a judge for cause must state the specific grounds upon which disqualification is based and the facts relied upon in support of the motion, rather than merely conclusory allegations; without stating the facts relied upon, the motion could simply be based upon a misunderstanding or mischaracterization of what was said or done.³ The facts, if true, must compel recusal.⁴

To be legally sufficient, an affidavit accompanying a recusal motion must contain the three elements essential to a complete affidavit: (a) a written oath embodying the facts as sworn by the affiant, (b) the signature of the affiant, and (c) the attestation

by an officer authorized to administer the oath that the affidavit was actually sworn by the affiant before the officer.⁵ Also, a legally sufficient affidavit in support of a motion for recusal due to the judge's personal bias must (1) state material facts with particularity; (2) state facts that, if true, would convince a reasonable person that a bias exists; and (3) state facts that show the bias is personal, as opposed to judicial, in nature.⁶

An affidavit in support of a motion to disqualify a judge is generally insufficient when it is supported merely by hearsay, where the hearsay has no indicia of reliability.⁷

An affidavit based on a judge's religious affiliation alone, or that pertains to allegations of bias in unrelated contexts, is not sufficient.⁸

While some jurisdictions adhere to the view that an affidavit of prejudice must comply strictly with statutory requirements,⁹ technical defects may be overlooked if the motion is timely,¹⁰ and informal requests will be recognized.¹¹ While it is certainly the better practice for a party submitting a recusal motion to file along with the motion one or more separate affidavits stating the specific facts on which the motion is based and showing clearly that the three threshold criteria have been met, a sworn verification that the facts contained in the foregoing recusal motion are true and correct to the best of the movant-affiant's knowledge and belief substantially complies with the accompanying affidavit requirement.¹²

An averment as to when the prejudice was discovered is unnecessary where the statute does not require it,¹³ unless the affidavit is not filed within the time fixed by law,¹⁴ or the bias or prejudice is discovered after submission of any issue for decision by the judge.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

A motion to recuse or disqualify a trial judge is legally sufficient when the alleged facts would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial. *S.S. v. Department of Children and Families*, 298 So. 3d 1184 (Fla. 3d DCA 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 *People v. Barton*, 121 P.3d 224 (Colo. App. 2004), as modified on denial of reh'g, (Feb. 3, 2005) and (overruled on other grounds by, *Lopez v. People*, 113 P.3d 713 (Colo. 2005)); *In re Estate of Robertson*, 271 Ga. App. 785, 611 S.E.2d 680 (2005).
- 2 *People v. Barton*, 121 P.3d 224 (Colo. App. 2004), as modified on denial of reh'g, (Feb. 3, 2005) and (overruled on other grounds by, *Lopez v. People*, 113 P.3d 713 (Colo. 2005)).
- 3 *Garcia v. Absolute Bail Bonds, LLC*, 161 Idaho 616, 389 P.3d 161 (2016).
- 4 *Johnson v. State*, 260 Ga. App. 413, 579 S.E.2d 809 (2003).
- 5 *Post v. State*, 298 Ga. 241, 779 S.E.2d 624 (2015).
- 6 *Netsphere, Inc. v. Baron*, 703 F.3d 296 (5th Cir. 2012).
- 7 *Ex parte Monsanto Co.*, 862 So. 2d 595 (Ala. 2003), as modified on denial of reh'g, (May 9, 2003).

8 Treff v. Hinckley, 2001 UT 50, 26 P.3d 212 (Utah 2001).
9 Goodrick v. State, 98 Idaho 124, 559 P.2d 303 (1977).
10 People v. Redisi, 188 Ill. App. 3d 797, 136 Ill. Dec. 361, 544 N.E.2d 1136 (2d Dist. 1989).
11 American Buyers Life Ins. Co. v. Superior Court In and For Maricopa County, 84 Ariz. 377, 329 P.2d 1100
 (1958).
 As to when the mere filing of an affidavit is sufficient to disqualify, see § 184.
12 Post v. State, 298 Ga. 241, 779 S.E.2d 624 (2015).
13 State v. Irvine, 335 Mo. 261, 72 S.W.2d 96, 93 A.L.R. 232 (1934).
14 Duncan v. U.S., 48 F.2d 128 (C.C.A. 9th Cir. 1931).
15 State v. Morgan, 142 La. 755, 77 So. 588 (1917).
 As to the timeliness of motions for disqualification, see §§ 168 to 174.

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